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FEDERAL COMMUNICATIONS COMMISSION  
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June 30, 1995

**BY HAND**

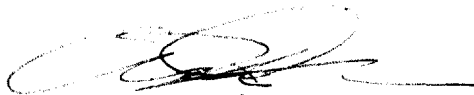
William F. Caton, Acting Scty.  
Federal Communications Commission  
1919 M Street N.W., Room 222  
Washington DC

Re: CS Docket No. 95-61

Dear Mr. Caton:

Enclosed is an original and four copies of a Reply Comment filed on behalf of my client, PrimeTime 24 in response to the above captioned Notice of Inquiry.

Sincerely,



Adrian Cronauer

enc.

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*Before the*  
**FEDERAL COMMUNICATIONS COMMISSION**  
**WASHINGTON DC 20554**

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of:

Annual Assessment of the  
Status of Competition  
in the Market for the Delivery  
of Video Programming

CS Docket No. 95-61

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**COMMENTS IN RESPONSE TO NOTICE OF INQUIRY**

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Filed on Behalf of

**PrimeTime 24**

June 30, 1995

***Before the  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON DC 20554***

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**REPLY COMMENTS OF PRIMETIME 24**

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**I. INTRODUCTION**

This brief comment is filed on behalf of PrimeTime 24 in response to the Notice of Inquiry ("NOI") released May 24, 1995 in which the Federal Communications Commission (Commission) solicited public comment regarding the cable industry, existing and potential competitors to cable systems and the prospect of increased competition in the market for the distribution of video programming.

## **II. IN RESPONSE TO NOI ITEMS 40(f) AND 45(b):**

Both of these questions refer to "the inability to offer local broadcast channels" affecting the competitive impact of DBS and HSD service, and seek information about any developments that would permit DBS or HSD dish owners to use their systems to receive local broadcast channels.

These questions seem to be premised on an incorrect assumption that both C-band and Ku-band dish owners cannot now receive the sort of programming normally provided by broadcast channels; in fact they can do so in either of two ways. A simple A/B switch —operated from the viewer's remote control unit, in the case of DBS service — will allow any dish user to switch at will from a satellite signal to local stations' off-air signals. This relatively primitive but totally effective technology has been available for decades and, therefore, should eliminate any concern that local broadcast service is not available to DBS customers or that there is any significant competitive effect on either DBS service or networks and their affiliates.

In areas where no local stations can be received, DBS users may receive programming from any of the national networks (ABC, CBS, Fox and NBC) through services such as "PrimeTime 24" which retransmits, via satellite, the off-air signal of seven network affiliates. PrimeTime 24, which is available on C-Band and on Ku-band through Direct TV, was begun in 1986 with three east-coast stations. In 1994, three stations from the west-coast and a Fox affiliate from Chicago were added to PrimeTime 24's line-up. The current roster for PrimeTime 24 consists of: WABC, New York (ABC); WXIA, Atlanta (NBC); WRAL, Raleigh (CBS); WFLD, Chicago (Fox); KUMO,

Seattle (ABC); WPIX, San Francisco (CBS) and KNBC, Los Angeles (NBC). PrimeTime 24 now has over a million subscribers.

In 1987, Netlink, a Denver CO competitor to PrimeTime 24, began satellite retransmission of the off-air signal of broadcast television including three network stations located in Denver. In 1994, it added 3 east-coast network stations which are available on medium power Ku-band service offered by PrimeStar.

The combined offerings of PrimeTime 24 and Netlink ensure that C-band and Ku-band distributors remain able to offer a full complement of television fare to all viewers, while enhancing, rather than competing with, the reach of network programs distributed by each network and affiliate group.

Apart from the foregoing general assessment of the overall market place, based on the framework intended by the Satellite Home Viewer Act, it must be noted that the DBS, HSD and Broadcast arenas are not currently functioning as intended by Congress. Under the terms of the Act, as amended in 1994, a substantial majority of the network affiliate community forwarded challenges to the satellite delivery of network programming to a significant percentage of the HSD viewing universe; approximately one-fifth of pre-1994 Act subscriber base, far in excess of the five percent annual threshold intended by Congress. As a result, in order to comply as best it could with response times included in the Act, PrimeTime 24 has had to terminate service to challenged households virtually randomly. Many eligible "unserved households" are being denied network service as a result. Given developments in this area to date, further congressional action is needed. Without it, network programming may not be available in the

future to all television households - the goal of all previous policy decisions of Congress and the FCC.

### **III. IN RESPONSE TO NOI ITEM 57(c):**

This question seeks information concerning the competitive effect of broadcast television in conjunction with multichannel distribution services such as DBS, which are prohibited from offering programming from network-affiliated broadcast television stations except in limited areas, on the program delivery market.

The prohibition of offering network programming is, obviously, intended to support the Commission's general and long-standing policy of fostering localism in broadcasting. However, large dish owners are predominantly located in rural areas where there is little or no off-air access to network programming. Yet, the ability to obtain network programs is one of the most important reasons many rural residents originally became dish owners.

Program providers such as PrimeTime 24 are not in competition with local network service. Rather, they substitute for the missing local signals by providing the network programs that dish owners deem so important and that would otherwise be unavailable to them. In effect, then, satellite-provided network programming actually strengthens the networks' viability.

#### **IV. IN RESPONSE TO NOI ITEM 90:**

This question concerns difficulties that non-cable MPVDs face in acquiring programming services on nondiscriminatory terms. The program access rules of The 1992 Cable Act and the Commission's decisions in response to program access complaints have been only partially successful in serving their intended purpose to alleviate this problem. The problem persists because, although vertically integrated MVPDs are regulated in this regard, nonintegrated companies still are free to discriminate against unfavored MVPDs.

A perfect example is ESPN which can refuse —and, in fact have acted in a way that constitutes a constructive refusal —to provide programming to PrimeTime 24. Not Vertically integrated ESPN have given access only to limited number of companies, no more than five of their biggest customers. Of course, ESPN's refusal to provide programming was not blatant. Rather, in seeking ESPN programming, PrimeTime 24 found itself in a kafkaesque world where, over a period of three years, ESPN piled avoidance upon delay, failed to return phone calls, and, whenever pinned down, provided only vague replies.

Approximately a year and a half ago, PrimeTime 24 was able to find an alternative means of providing ESPN programming to PrimeTime 24's subscribers by dealing through a sub-distributor. The cost to PrimeTime 24, though, is artificially higher because of the necessity to use this circuitous procedure. ESPN normally charges a straightforward \$1.25 per subscriber for ESPN One and Two. However, by dealing through a sub-distributor, PrimeTime 24 must pay an additional forty cents per

subscriber for ESPN One and Two. The cost through the sub-distributor is \$1.65<sup>1</sup> —an increase of 32% over the rate for an impossible to obtain direct feed. Until recently, moreover, ESPN pursued a policy of making customers buy on an annual basis, as compared with other programmers who sell their product on a monthly basis. Thus, PrimeTime 24's package sales were negatively effected for at least a year and a half. It has only been in the last three months that PrimeTime 24 has been able to obtain a monthly rate for ESPN.

Much like Cable News Network, ESPN is an absolute "must have" for a programming package. Because of its critical importance and the fact that it is the only basic sports service available, ESPN has the equivalent of monopoly power, yet without being vertically integrated. It is able to exercise that monopoly power to the disadvantage of MVPDs, especially those direct-to-home distributors who do not have the bargaining advantages of monopoly cable systems.

Respectfully submitted,

PRIMETIME 24

By Adrian Cronauer / ss  
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June 30, 1995

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<sup>1</sup>The cost per subscriber for ESPN Two is only twelve cents.